IN THE TEXAS COURT OF CRIMINAL APPEALS

RALPH DEWAYNE WATKINS
Petitioner

v.

THE STATE OF TEXAS
Respondent

ON DISCRETIONARY REVIEW FROM THE TENTH COURT OF APPEALS
APPEAL FROM THE 13TH JUDICIAL DISTRICT COURT OF NAVARRO COUNTY, TEXAS
THE HONORABLE JAMES LAGOMARSINO, JUDGE PRESIDING

STATE'S BRIEF

ORAL ARGUMENT
REQUESTED

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CORRECTED IDENTIFICATION OF PARTIES

Respondent, the State of Texas, adopts Petitioner's identification of parties and counsel, with the following corrections:

Appellate counsel for Respondent, the State of Texas, are Robert Linus Koehl and Will Thompson.

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STATEMENT REGARDING ORAL ARGUMENT

The State agrees with Petitioner that oral argument will assist the Court in resolving this case's issue. Accordingly, the State requests oral argument. This Court has granted oral argument in its grant of discretionary review.

ISSUE PRESENTED

Both the Code Construction Act and this Court have long established that the legislature adopts preexisting judicial interpretations of phrases when the legislature copies entire phrases into a new statute. The legislature kept the phrase "material to any matter involved in the action" in the new version of TEX. CODE CRIM. P. art 39.14(a) despite otherwise rewriting the statute. This Court had previously interpreted that phrase to mean that the evidence was outcome determinative. Did the meaning change when the legislature placed that phrase into the statute's current version?

SUMMARY OF THE ARGUMENT

This Court had defined the phrase "material to any matter involved in the action" prior to the legislature enacting the current iteration of article 39.14. Pursuant to both the Code Construction Act and this Court's prior rulings regarding the borrowed language canon, the legislature has adopted that definition

by keeping the exact phrase in the statute. Analysis of textual and extra-textual factors fails to overcome the presumption that the legislature both knew of the definition and intended to keep it. The phrase's plain meaning is not ambiguous. It does not lead to an absurd result. It does not interfere with the statute's purpose.

ARGUMENT AND AUTHORITIES

> ***And it is a well recognized rule of construction that when a Legislature in enacting a new statute uses identically the same language as that formerly used in the old statute, it is supposed to know the construction that had been placed on these words, and to have used the same words in the same sense as theretofore given them.***
>
> *Sanders v. State*, 158 S.W. 291, 293 (Tex. Crim. App. 1913)
>
> ***Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.***
>
> TEX. GOV'T CODE § 311.011(b) (West 1985)

This Court construes statutes according to their plain meaning unless such a construction would lead to absurd results, or the language is ambiguous. *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). To determine plain meaning, this Court examines the wording and structure of the statute according to the rules of grammar and usage, unless they are defined by statute or have ***acquired a***

particular meaning. *Liverman v. State*, 470 S.W.3d 831, 836 (Tex. Crim. App. 2015); Tex. Gov't Code § 311.011(b) (emphasis added). In other words, if the legislature uses a phrase that has a preexisting judicial interpretation, the judicial interpretation becomes the phrase's plain meaning. *See Infra* §§ I(a)-(b). A statute is ambiguous when it is reasonably susceptible to more than one interpretation. *Baird v. State*, 398 S.W.3d 220, 229 (Tex. Crim. App. 2013).

I. The phrase "material to any matter involved in the action" acquired a particular meaning prior to the current iteration of article 39.14's enactment.

This Court has long defined the phrase "material to any matter involved in the action" to mean that evidence is outcome determinative. Lower courts have expanded that definition to mean that production to the defense is outcome determinative. Under the Code Construction Act, this Court's jurisprudence, and the Texas Supreme Court's jurisprudence, the legislature both knew and intended that this interpretation constitute the phrase's plain meaning when it used the phrase in article 39.14's current version.

A. The Borrowed Language Canon requires courts to presume that the legislature knew of—and intended to adopt—preexisting definitions.

Texas Courts have long recognized a canon of construction which dictates that the legislature knows and intends to adopt all prior judicial definitions of phrases which the legislature utilizes in a statute. The Texas Supreme Court first recognized an early version of this canon in *Ennis v. Crump*, 6 Tex. 34 (1851). The Texas Supreme Court articulated this canon more directly and succinctly about four decades later. *Cargill v. Kountze*, 86 Tex. 386, 400 (Tex. 1894) (opinion on rehearing) ("When the Legislature re-enacts a statute which has been construed by the courts, the presumption is that it intended that the new enactment should receive the same construction as the old.").

The Texas Court of Criminal Appeals has accepted this canon since 1910. *See Lewis v. State*, 58 Tex. Crim. 351, 363 (Tex. Crim. App. 1910). In that case, this Court stated, "Indeed, the rule is so thoroughly settled not only in this State, but in practically every court of last resort throughout the country, and has so universally and unqualifiedly received the sanction and approval of the most eminent text writers as to admit of neither doubt nor difficulty." *Id*.

Since the 1985 adoption of the Code Construction Act, both this Court and the Texas Supreme Court have treated the "borrowed language" canon as a presumption. *See Grunsfeld v. State*, 843 S.W.2d 521, 523 (Tex. Crim App. 1992) (" . . . when examining amendments to existing legislation, it is presumed that the legislature was aware of caselaw affecting or relating to the statute."); *see also In re Allen*, 366 S.W.3d 696, 706 (Tex. 2012) ("We presume the Legislature is aware of relevant case law when it enacts or modifies statutes. A statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it.") (internal quotations omitted). This Court has even stated that if the legislature disapproved of a prior construction, it needed to make appropriate amendments. *See Miller v. State*, 33 S.W.3d 257, 260-61 (Tex. Crim. App. 2000) ("Moreover, we presume that the Legislature has been aware of our construction of article 42.08(a) and its forerunners for over 100 years . . . [i]f the legislature disapproved of our interpretation of article 42.08(a) and its forerunners, it could have made the appropriate amendments."). As such, both this Court and the Texas Supreme Court have determined that the legislature knows and intends preexisting judicial definitions/interpretations to apply to phrases that it uses.

B. The Code Construction Act requires courts to presume that the legislature knew of—and intended to adopt—preexisting definitions.

The 1985 Code Construction Act treats prior existing judicial definitions as the statute's plain meaning, rather than as a canon to interpret ambiguity. Specifically, the Code Construction Act states "[words] and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." TEX. GOV'T CODE § 311.011(b). It is of note that this rule is part of § 311.011, which deals with common and technical usage of words, rather than the canons of construction which appear later in the act. *Compare Id. with* §§ 311.021-311.024. Although § 311.011 does not specify "judicial interpretations," it does state "by legislative definition or otherwise" which logically encompasses judicial definitions. As such, the legislature has instructed Texas Courts that preexisting judicial definitions are to be treated as the plain meaning of phrases that the legislature places into statutes. Accordingly, courts need not wait until a phrase is considered ambiguous before determining that the legislature intended to use the preexisting definition—the definition is the phrase's plain meaning.

The Texas Supreme Court has followed suit and treated preexisting definitions as the statute's plain meaning, rather than a canon of construction.

> In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the language of the statute. We use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired.

City of Rockwall v. Hughes, 246 S.W.3d 621, 625-26 (Tex. 2008) (internal citations omitted).

The same analysis has applied in criminal settings as well. *See e.g.*, *Mitchell v. State*, 473 S.W.3d 503, 514-15 (Tex. App.—El Paso 2015, no pet.).

> [W]hen determining the meaning of an undefined term used in a statute, a court should first look to "definitions prescribed by the Legislature and any technical or particular meaning the words have acquired" in accordance with the construction, and if no such meaning is apparent, then to "their plain and common meaning" . . . to discern the Legislature's intent in using an undefined term in a statute, a court may look to, among other things, prior court opinions construing the term in other contexts. Further, a court may presume that the Legislature was aware of relevant prior case law when it enacts a statute.

Id.

Essentially, a phrase's prior judicial definition becomes the phrase's plain meaning when the legislature adopts or re-uses that phrase in a statute. As such, the Court's prior reasoning for using the definition becomes a moot question when

the legislature adopts the phrase, constructively knowing and adopting the definition.

C. This Court defined "material to any matter involved in the action" prior to January 1, 2014.

This Court first defined the materiality prong of article 39.14 in 1980. *Quinones v. State*, 592 S.W.2d 933 (Tex. Crim. App. 1980). There, the Court adopted the *Agurs* standard from the United States Supreme Court to define the materiality prong. *Id*. at 940-41. Under this definition, evidence was material to any matter involved in the action if it created a reasonable doubt that did not otherwise exist, when evaluated in the context of the record as a whole. *Id*. This initial focus was on exculpatory/impeaching/mitigating evidence, because it centered on whether turning evidence over to the defense would result in a different outcome.

This Court later revisited the issue and restated the materiality standard to include "evidence indispensable to the State's case." *McBride v. State*, 838 S.W.2d 248, 250 (Tex. Crim. App. 1992) (internal citations omitted); *Massey v. State*, 933 S.W.2d 141, 153 (Tex. Crim. App. 1996). After this shift from focusing on exculpatory to inculpatory evidence, this Court has consistently defined

materiality under article 39.14 to mean something that is conclusive/outcome-determinative to the State's case since 1992.

When the legislature passed the Michael Morton Act in 2013, the words "material to any matter involved in the action" were already present in article 39.14, and had been present in all prior iterations since the 1960s. *See* TEX. CODE CRIM. P. art 39.14 (West 1966). As such, the legislature is presumed to have both known and intended that the phrase carried the meaning which this Court had assigned to it by the time the law was passed. *See generally Allen*, 366 S.W.3d at 706. Indeed, the legislature had passed a law dictating that pre-existing definitions shall be construed as the statute's plain meaning. *See* TEX. GOV'T CODE § 311.011(b). Accordingly, the phrase "material to any matter involved in the action" meant evidence which was indispensable/conclusive/outcome-determinative regarding a defendant's guilt.

D. The definition of "material to any matter involved in the action" has remained constant since January 1, 2014, and the legislature has had multiple opportunities to change the statute's language.

In cases post-dating the Michael Morton Act's 2013 overhaul of article 39.14, this Court has continued to maintain the existing materiality definition for

article 39.14. But Courts of Appeals have expanded the definition, and the legislature has remained silent despite altering 39.14 twice since the original Michael Morton Act.

On April 22, 2015, this Court stated that evidence is material if its omission would create "a reasonable doubt that did not otherwise exist" or if it is indispensable to the State's case, meaning that its exclusion would "affect the essential proof" that the defendant committed the offense. *Ehrke v. State*, 459 S.W.3d 606, 611 (Tex. Crim. App. 2015).

Subsequent to *Ehrke*, the legislature altered article 39.14 on June 15, 2015, with the changes becoming effective September 1, 2015. Tex. H.B. 510, 84th Leg. (2015), 2015 Tex. Gen. Laws 459. If the legislature disagreed with the Court's continual use of the pre-Morton materiality definition, this would have been the time to make a change. *See generally Miller*, 33 S.W.3d at 260-61. By not changing any of the language at this time, the legislature essentially re-adopted the preexisting materiality definition. *See Id*.

The Courts of Appeals have been reincorporating the *Quinones* standard whereby the analysis focuses on whether turning evidence over to the defense would be outcome determinative, rather than whether the evidence's exclusion

from trial would be outcome determinative. *See In re Hawk*, 05-16-00462-CV, 2016 WL 3085673 (Tex. App.—Dallas, May 31, 2016, no pet.) ("To establish materiality the defendant must show there is a reasonable probability that the evidence, ***if disclosed to the defense***, would result in a different outcome in the proceeding.") (emphasis added); *Meza v. State*, 07-15-00418, 2016 Tex. App. LEXIS 10690, at *4-6 (Tex. App.—Amarillo, Sep. 29, 2016, pet. ref'd) (not designated for publication) (" . . . materiality for purposes of art. 39.14(a) means that 'there is a reasonable probability that ***had the evidence been disclosed***, the outcome of the trial would have been different.'") (emphasis added) (internal citations omitted).

Subsequent to *Hawk* and *Meza*, the legislature again altered article 39.14 on June 12, 2017, with the changes becoming effective September 1, 2017. Tex. H.B. 34, 85th Leg. (2017), 2017 Tex. Gen. Laws 686. The legislature is presumed to have been aware of the expanding judicial definitions both from the Dallas and Amarillo Courts of Appeals. *See generally Miller*, 33 S.W.3d at 260-61. The legislature is presumed to have intended that these definitions apply by leaving the phrase untouched. *See Id*.

Accordingly, up until September 1, 2017, "material to any matter involved in the action" meant that evidence's exclusion would be outcome determinative. After September 1, 2017, the phrase meant that producing the evidence to the defense would be outcome determinative. If the phrase is to have any other meaning, then it is the role of the legislature, not the courts, to make that meaning clear. For that reason, the Court should affirm the Tenth Court of Appeals.

II. The plain meaning of "material to any matter involved in the action" is not ambiguous, does not lead to an absurd result, and gives effect to the legislature's changes.

This Court only looks beyond a statute's plain meaning if the plain meaning is ambiguous or leads to absurd results. *See Boykin*, 818 S.W.2d at 785. Only then does the Court look to extra-textual sources to ascertain the legislature's collective intent. *Id*.

A. There is no ambiguity in the statute's current wording because it is not susceptible to multiple interpretations.

The plain meaning of the phrase "material to any matter involved in the action" is not ambiguous. A statute is ambiguous when its language is reasonably susceptible to multiple interpretations. *Baird*, 398 S.W.3d at 229. There is no

ambiguity in article 39.14(a) regarding materiality. Indeed, the legislature copied the entire phrase word-for-word from the statute's prior iterations. *See* TEX. CODE CRIM. P. art. 39.14(a). The legislature has stated that phrases are to be construed according to preexisting definitions. TEX. GOV'T CODE § 311.011(b). The legislature is presumed to have known and intended that the prior definition applies. *See generally Allen*, 366 S.W.3d at 706. The statute is not ambiguous on its face.

Petitioner erroneously argues that the phrase is ambiguous because the statute no longer requires good cause, and he believes that the phrase is subject to multiple interpretations. Petitioner's Br. 16-22. But the removal of good cause did not negate the prior legal definition. Good cause is no longer necessary because a court order is no longer necessary—the new statute simply requires a request. *See* TEX. CODE CRIM. P. art. 39.14(a). Yet the phrase "material to any matter involved in the action" remains wholly untouched. The statute contains no indication that the legislature intended to change this phrase's meaning. As such, there is only one plain meaning for the statute: the one which the legislature told courts to keep when it wrote TEX. GOV'T CODE § 311.011(b).

For these reasons, the Court should hold that the statute is not ambiguous. Accordingly, the Court should affirm the Tenth Court of Appeals.

B. The existing materiality definition does not lead to an absurd result because it is a reasonable limitation on the statute's expansion of discovery rights.

Courts may resort to extra-textual factors to construe otherwise plain language when implementation of the plain language would lead to absurd results that the Legislature could not possibly have intended. *Baird*, 398 S.W.3d at 228.

The "Michael Morton Act" was named after a man who was wrongfully convicted after a prosecutor withheld exculpatory evidence. Brandi Grissom, *Perry Signs Michael Morton Act*, TEXAS TRIBUNE, May 16, 2013. As such, the act's purpose was to expand the State's discovery requirements in an effort to prevent such tragedies from reoccurring. The act achieved this goal by removing the materiality standard altogether for exculpatory, mitigating, and impeaching evidence. *See* TEX. CODE CRIM. P. art. 39.14(h). What was previously considered "Brady" evidence must now be produced regardless of materiality. *See Id*. The act further expanded a defendant's discovery rights by removing the requirement that a defendant show good cause. *See Id*. at 39.14(a). The act also placed the burden

on the State to produce evidence upon request, without the requirement of a court order. *See Id*.

The only limitations remaining in article 39.14 are: (a) a defendant must request the evidence to trigger the State's duty; (b) the State or someone in privity therewith must have custody of the evidence; and (c) the evidence must be material. *See* TEX. CODE CRIM. P. art. 39.14(a). The materiality requirement is a reasonable limitation on how far this statute expands discovery rights. Keeping the preexisting outcome-determinative definition is not an absurd result which the legislature could not possibly have intended. On the contrary, it mirrors the existing requirement that criminal convictions not be overturned for relatively minor errors. *See generally* TEX. R. APP. P. 44.2(b); *see also Barshaw v. State*, 342 S.W.3d 91, 93-94 (Tex. Crim. App. 2011) (stating that the Court will not overturn a conviction if an error did not influence—or only slightly influenced—the jury). Relevancy is a small threshold—needing only to be helpful in determining the truth or falsity of any fact. *See Montgomery v. State*, 810 S.W.2d 372, 376 (Tex. Crim. App. 1990), *modified on other grounds*, 810 S.W.2d 372 (Tex. Crim. App. 1991). It does not have to be conclusive, but rather needs to make a fact more or less likely. *See* TEX. R. EVID. 401(a).

The existing materiality limitation prevents evidence which would meet the low relevancy standard—but not conclusively convince a fact-finder—from causing a conviction's reversal. It does not lead to an absurd result. Contrarily, an absurd result would be overturning criminal convictions over a petty piece of evidence which had no real effect on a jury, but was not turned over due to prosecutor oversight. This is why the outcome-determinative definition to materiality is a reasonable limitation on the act's discovery expansion.

Petitioner erroneously argues that the existing definition of materiality would render article 39.14(h) superfluous. Petitioner's Br. 8-9. He then goes on to advocate for differing materiality standards to apply to paragraphs a and h. Petitioner's Br. 26-36. His argument fails because there is no materiality standard for paragraph h. *See* TEX. CODE CRIM. P. art. 39.14(h). Exculpatory/impeaching/ mitigating evidence is not subject to materiality analysis under Texas law. *See Id*. Only inculpatory evidence is subject to a materiality limitation on the State's production duties. *See Id*. at 39.14(a). As such, applying the existing materiality definition to article 39.14(a) cannot render article 39.14(h) superfluous.

For these reasons, this Court should hold that the existing materiality definition does not lead to an absurd result. Accordingly, this Court should affirm the Tenth Court of Appeals.

C. The existing materiality definition does not interfere with the legislature's intent in enacting the Michael Morton Act because the remainder of the statute fulfills the legislature's intent.

The Michael Morton Act achieved its goal of preventing the State from withholding impeaching, mitigating, or exculpatory evidence by removing the materiality requirement from article 39.14(h). *See Supra* II(B). It expanded a defendant's discovery rights by removing the good cause requirement, and triggering the State's duty with a request rather than requiring a court order. *Id*. But the legislature did not change one word in the materiality requirement, which remains as a reasonable limitation on that expansion.

Petitioner erroneously argues that keeping the existing materiality requirement fails to give the legislature's changes effect. Petitioner's Brief 38 ("By continuing to use the pre-Morton definition of materiality, essentially an outcome determinative standard, the Tenth Court of Appeals did not give effect to the Legislature's change to the statute."). He demonstrates many of the changes

which the legislature did actually make to the law. *See Id*. at 39-43. But there remains an analytical leap between the changes the legislature made, and changes that the legislature did not make. In short, the legislature changed some things and left others alone. Petitioner's argument suggests that the legislature changing some things evidences an intent to change those things which the legislature chose to leave alone. If the legislature had intended to supplant the existing materiality standard with relevance, they would have said "***relevant*** to any matter involved in the action" rather than "***material*** to any matter involved in the action." They did not.

Petitioner also erroneously relies on extra-textual comments by the statute's authoring legislator and certain committee reports to support his position. Petitioner's Br. 14, 22-23, 40. But the Court focuses on the collective purpose and intent of all legislators, rather than what an individual legislator may have intended or wanted. *Clinton v. State*, 354 S.W.3d 795, 800 (Tex. Crim. App. 2011). This prevents statutory construction from devolving into what United States Supreme Court Justice Breyer described as looking "over the cocktail party to identify your friends." U.S. Association of Constitutional Law Discussion: Full Written Transcript of Scalia-Breyer Debate on Foreign Law, Jan. 13, 2005,

http://www.freerepublic.com/focus/news/1352357/posts (last visited Jan. 9, 2019). The materiality limitation on production of inculpatory evidence demonstrates the type of compromise one would logically expect to see between those who wish to expand and those who wish to limit discovery rights.

The existing definition of "material to any matter involved in the action" does not interfere with the legislature's intent in writing the Michael Morton Act. As such, this Court should affirm the Tenth Court of Appeals.

PRAYER

The Tenth Court of Appeals properly applied the existing definition of "material to any matter involved in the action" to the current iteration of Article 39.14(a).

WHEREFORE PREMISES CONSIDERED, Respondent the State of Texas respectfully requests that this Court affirm the 10th Court of Appeals in this case.

Respectfully Submitted on January 17, 2019,

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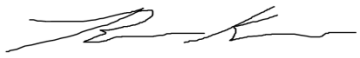
CERTIFICATE OF SERVICE

The undersigned has e-served Jason Niehaus, counsel for the Petitioner, through the eFileTexas.gov filing system and emailed a courtesy copy on the 17th day of January, 2019. The undersigned has e-served the State Prosecuting Attorney's Office through the same filing system and emailed a courtesy copy as well. The undersigned will prepare and dispatch ten paper copies of the preceding brief to the Court within the next three days.



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CERTIFICATE OF COMPLIANCE

This brief complies with the word limitations in Tex. R. App. P. 9.4(i)(2). In reliance on the word count provided by the computer program used to draft this brief, the undersigned attorney certifies that this brief contains 3,793 words. This brief uses 14-point Times New Roman font for the text and 12-point Times New Roman font for the footnotes.

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